

Hearing Date: February 15, 2022
Hearing Time: 10:00 a.m.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

CELSIUS NETWORK LLC, *et al.*,¹
Debtors.

Chapter 11

Case No. 22-10964 (MG)

Jointly Administered

**RESPONSE OF THE AD HOC GROUP OF BORROWERS
TO THE DEBTORS' OBJECTION TO VINCENT J. BURNISKE'S
MOTION TO RELEASE LOAN REPAYMENT OR
COLLATERAL DUE UPON LOAN COMPLETION (ECF DOC. # 2012)**

The Ad Hoc Group of Borrowers (the “**Ad Hoc Group**”),² by and through its attorneys, McCarter & English, LLP, hereby files this Response to the Debtors’ Objection To Vincent J. Burniske’s Motion To Release Loan Repayment Or Collateral Due Upon Loan Completion (ECF DOC. # 2012 (the “**Response**”; ECF Doc. # 2012) and respectfully states as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); and Celsius US Holding LLC (7956). The location of Debtor Celsius Network LLC’s principal place of business is 121 River Street, PH05, Hoboken, New Jersey 07030.

² The members of the Ad Hoc Group (collectively, the “**Borrowers**”) are set forth in certain statements (the “**Rule 2019 Statements**”) filed by McCarter & English, LLP from time to time pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). On or about January 23, 2023, the McCarter Firm filed the *First Supplemental Verified Statement Pursuant to Bankruptcy Rule 2019* [ECF Doc. # 1920], which is the most recent Rule 2019 Statement identifying the members of the Ad Hoc Group. Additional members continue to join the Ad Hoc Group on an ongoing basis, and the McCarter Firm will file additional Rule 2019 Statements as necessary to comply with Bankruptcy Rule 2019.

1. On December 8, 2022, Vincent Burniske (“**Burniske**”), a *pro se* litigant and a former borrower, filed a 2 page letter motion (“**Letter Motion**”) requesting that the Court compel the Debtors to return either \$32,000 or the BTC that served as collateral for his loan. *See* ECF Doc. #1649. From the Letter Motion, it appears that Mr. Burniske paid off his loan on or about June 14, 2022. Following the repayment of his loan, the Debtors transferred Mr. Burniske’s cryptocurrency from the borrow program to the earn program.

2. On February 8, 2022, the Debtors filed their 12 page Response to the Letter Motion. The Debtors raise a number of arguments concerning the “clear” language of the loan terms of use that allegedly support their decision to move the cryptocurrency into Mr. Burniske’s earn account.

3. The Letter Motion is scheduled to be heard before the Court on February 15, 2023.

4. The Ad Hoc Group of Borrowers respectfully requests that the hearing on the Letter Motion be adjourned so that the Ad Hoc Group of Borrowers and other parties can brief and respond to certain issues raised in the Response.

5. Among other things, the Ad Hoc Group of Borrowers wish to brief whether the provision in the loan terms of use that the collateral would be returned to the customers’ earn account is a valid and unenforceable provision.

6. As the Court is aware, prior to the Petition Date, many state regulatory agencies had determined that earn was an “unregistered security” and directed Celsius to “cease and desist” from selling those unregistered securities. Among others, the following cease and desists Order had been entered by the following states. *In the Matter of Celsius Network, LLC*, Summary Cease And Desist Order entered on September 17, 2021 by the New Jersey Bureau of Securities

against Celsius Network LLC (available at <https://www.nj.gov/oag/newsreleases21/Celsius-Order-9.17.21.pdf>); *Department of Financial Institutions v. Celsius Network LLC*, Administrative Action No. 2021-AH-00024, Emergency Order to Cease and Desist Order entered on September 23, 2021 (<https://kfi.ky.gov/Documents/Celsius%20Network%20LLC%202021AH00024.pdf>); *In the Matter of Determining there has been a violation of the Securities Act of Washington by Celsius Network Inc. et al.*, Order No. S-21-3212-21-SC01, Statement Of Charges And Notice Of Intent To Enter Order To Cease And Desist, To Impose A Fine, And To Charge Costs entered on October 20, 2021 <https://dfi.wa.gov/documents/securities-orders/S-21-3212-21-SC01.pdf>; *Texas State Securities Board v. Celsius Network Inc., et al.*, SOAH Docket No: 312-22-0160, Notice of Hearing by the State Security Board of Texas seeking entry of Cease and Desist Order dated September 17, 2021 (available at https://www.ssb.texas.gov/2021-09/20210917_FINAL_Celsius_NOH_js_signed.pdf).

7. As noted, the Debtors, in their Response, assert that after a loan was repaid, the loan terms and conditions required them to transfer the cryptocurrency back to the earn account. In the briefing submitted to this Court to date, no party addresses the legal issue of: (i) whether an illegal act that has been prohibited by various regulators – namely, the movement of cryptocurrency from borrow into earn (an unregistered security) – is a valid and enforceable provision of the loan terms of use; or (ii) whether, in light of the cease and desist orders, the Debtors should have moved such cryptocurrency to a custody account for the benefit of the customer.

8. There are other legal issues that the Ad Hoc Group of Borrowers believes should be briefed in consideration of the Letter Motion as well.

9. The Ad Hoc Group of Borrowers therefore respectfully requests that the consideration of the Letter Motion be adjourned so that it can be coordinated with other parties

who wish to be heard on these issues.

10. The Ad Hoc Group of Borrowers believes that consideration of these issues in this manner will be more efficient and avoid piecemeal litigation.

WHEREFORE, the Ad Hoc Group of Borrowers respectfully requests that this Court adjourn consideration of the Letter Motion and set a briefing schedule so that other interested parties can raise issues and be heard along with such other relief as may be just and proper

Dated: New York, New York
February 13, 2023

McCARTER & ENGLISH, LLP

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